

ESTTA Tracking number: **ESTTA661260**

Filing date: **03/16/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Next Retail Limited
Granted to Date of previous extension	03/15/2015
Address	Desford Road Enderby, LE194AT UNITED KINGDOM
Attorney information	Mitchell Radin Collen IP, Intellectual Property Law, P.C. The Holyoke-Manhattan Building 80 South Highland Avenue Ossining, NY 10562 UNITED STATES mradin@collenip.com, ogelber@collenip.com, docket@collenip.com Phone:(914) 941-5668

### Applicant Information

Application No	86007497	Publication date	09/16/2014
Opposition Filing Date	03/16/2015	Opposition Period Ends	03/15/2015
Applicant	Paul R. Kenney, III PO Box 47112 Phoenix, AZ 850687112 UNITED STATES		

### Goods/Services Affected by Opposition


Class 025. First Use: 2013/07/10 First Use In Commerce: 2013/07/10  
All goods and services in the class are opposed, namely: Clothing and headgear, namely, T-shirts, caps, and wristbands associated with anti-bullying

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2912202	Application Date	06/19/2003
Registration Date	12/21/2004	Foreign Priority Date	NONE
Word Mark	NEXT		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1997/12/00 First Use In Commerce: 1997/12/00 clothing, namely, t-shirts, fleece shirts, denim shirts, jackets, pants and hats

U.S. Registration No.	4553715	Application Date	10/22/2008
Registration Date	06/24/2014	Foreign Priority Date	NONE


Word Mark	NEXT DIRECTORY
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Design Mark	
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Description of Mark	NONE
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Goods/Services	<p>Class 025. First use: First Use: 0 First Use In Commerce: 0  Clothing, namely, socks; stockings; tights; scarves; gloves; mittens; belts; outerwear, namely, coats, overcoats and raincoats; sports coats; suits; jackets; trousers; pants; jeans; shorts; shirts; T-shirts; polo-shirts; tops; pullovers; sweat-ers; jerseys; cardigans; jumpers; fleeces, namely, pullovers, jackets and vests; braces; underwear; vests; dinner jackets; ties; cravats; swimsuits; dressing gowns; pajamas; footwear and headwear</p> <p>Class 035. First use: First Use: 0 First Use In Commerce: 0  Retail store services, online retail store services, mail order catalogue services, online catalog services and online trading services in the fields of clothing, headgear and footwear, jewelry, fashion accessories, household articles, towels, bedding, textiles, furniture, lighting apparatus, toys, electrical products, cosmet-ics, non-medicated toilet preparations, eyewear, carrying cases, handbags and all manner of bags, kitchenware, paints, wallpaper and other products for decor-ating the home, pictures, picture frames, electrical products cameras; providing consulting and advice in relation to the aforesaid retail services relating to the aforesaid goods; business management consultancy, namely, offering technical and business management assistance in the establishment and operation of re-tail stores in the field of the aforesaid goods</p>
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U.S. Application	85463975	Application Date	11/03/2011
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No.			
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NEXT DIRECT		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 0 First Use In Commerce: 0</p> <p>Retail services, namely, retail store services, online retail store services, mail order catalogue services, online catalog services, online trading services in which seller posts products to be purchased by buyers via internet, and wireless retail store services through wireless electronic devices and applications all featuring a wide variety of consumer goods; retail store services, online retail store services, mail order catalogue services, online catalog services, online trading services in which seller posts products to be purchased by buyers via internet, and wireless retail store services through wireless electronic devices and applications all in the fields of clothing, headgear and footwear, jewelry, fashion accessories, household articles, towels, bedding, textiles, furniture, lighting apparatus, toys, electrical products, cosmetics, non-medicated toilet preparations, eyewear, carrying cases, handbags and all manner of bags, kitchenware, paints, wallpaper and other products for decorating the home, pictures, picture frames, electrical products, and cameras; providing consulting and advice in relation to the aforesaid retail services relating to the aforesaid goods; business management consultancy, namely, offering technical and business management assistance in the establishment and operation of retail stores in the field of the aforesaid goods; coupon services, namely, consumer reward programs for advertising and promotional purposes which permit consumers to earn rewards and coupons based on purchases and other activities</p>		

U.S. Application No.	85463777	Application Date	11/03/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NEXT		
Design Mark			

Description of Mark	NONE
Goods/Services	<p>Class 009. First use: First Use: 0 First Use In Commerce: 0 Accessories for clothing and fashion, namely, sunglasses</p> <p>Class 011. First use: First Use: 0 First Use In Commerce: 0 Accessories for home and house, namely, toilet seats, decorative lanterns</p> <p>Class 014. First use: First Use: 0 First Use In Commerce: 0 Accessories for clothing and fashion, namely, wedding cravat pins, necklaces, bracelets, bangles, rings, earrings, jewelry holders</p> <p>Class 016. First use: First Use: 0 First Use In Commerce: 0 Accessories for home and house, namely, wall stickers, framed and unframed art pictures, framed and unframed art prints and framed and unframed art reproductions, chalk boards and memorandum boards, greetings cards, paper gift wrap</p> <p>Class 018. First use: First Use: 0 First Use In Commerce: 0 Accessories for clothing and fashion, namely, purses, handbags, wallets, clutch-bags, tote bags, umbrellas</p> <p>Class 020. First use: First Use: 0 First Use In Commerce: 0 Accessories for home and house, namely, drawer units, towel racks, shelves, mirrors, decorative wall plaques made of plastics or wood; Accessories for bedding, namely, pillows, cushions, mattress toppers</p> <p>Class 021. First use: First Use: 0 First Use In Commerce: 0 Accessories for home and house, namely, chopping boards for kitchen use, bread bins, dish drying racks, pasta bowls, household containers for foods, saucepans, cake stands, bowls, bottles sold empty, vases, candle holders, drinking glasses, waste and refuse bins for household use, laundry bins, towel rails and rings, toilet brushes, toilet roll holders, soap dispensers, toothbrush holders, pet feeding and drinking bowls, bird feeders, planters for domestic gardening, laundry hampers; accessories for the home and house, namely, ornaments of china, ornaments of porcelain and ornaments of glass; accessories for the home and house, namely, decorative wall plaques of china, porcelain or glass</p> <p>Class 022. First use: First Use: 0 First Use In Commerce: 0 Accessories for home and house, namely, laundry bags</p> <p>Class 024. First use: First Use: 0 First Use In Commerce: 0 Accessories for home and house, namely, wall hangings of textile, curtains of textile, shower curtains, oven gloves and mitts, bath towels, textile tablecloths, tea towels, textile place mats, cork placemats, leather placemats, synthetic placemats; Accessories for bedding, namely, sheets, pillow covers, duvets, blankets, bed sets composed of duvet covers and pillowcases, children's bed sets composed of duvet covers and pillowcases, fitted sheets, bed linens, throws, fabric valances</p> <p>Class 025. First use: First Use: 0 First Use In Commerce: 0 Clothing, namely, various types of clothing for men, women and children and not professional uniforms, namely, t-shirts, pants, dresses, skirts, tops, shirts, shorts, jeans, knitwear in the nature of jumpers, sweaters, cardigans, dresses, hats, and scarves; footwear in the nature of trainers, boots, tights, joggers, hoodies, shorts, t-shirts, jackets, leggings, polo shirts, jumpers, sweat tops, track suits, hats, vests, bras, socks, leotards, swimsuits, trunks; coats, jackets, waistcoats, tights, underwear, lingerie, sleepwear, bras, socks, suits, bridesmaid dresses, ties, bow ties, beachwear, scarves, gloves, ponchos; footwear, headwear, headbands; accessories for clothing and fashion, namely, belts</p> <p>Class 027. First use: First Use: 0 First Use In Commerce: 0 Accessories for home and house, namely, bathmats, rugs, rug grippers, floor runners, door mats, wallpaper</p>

	Class 028. First use: First Use: 0 First Use In Commerce: 0 Accessories for play, namely, play tents, toys, namely, dolls, puzzles, plush toys, bath toys, rattles, toy tea sets, toy harmonica, toy clarinet, toy recorder, play sets for dolls, play sets for instruments; accessories for holidays, namely, Christmas tree decorations
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Attachments	76523925#TMSN.png( bytes ) 77597681#TMSN.png( bytes ) 85463975#TMSN.png( bytes ) 85463777#TMSN.png( bytes ) Q1104 Notice of Opposition.pdf(164981 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Oren Gelber/
Name	Oren Gelber
Date	03/16/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE TRADEMARK  
TRIAL AND APPEAL BOARD**

Applicant : Paul R. Kenney, III  
Serial No. : 86/007,497  
Filed : July 11, 2013  
For : NEXT MAN UP  
Published : September 16, 2014

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313

**NOTICE OF OPPOSITION**

The Opposer Next Retail Limited, a limited liability company located at Desford Road, Enderby, United Kingdom LE194AT (referred to as "Next Retail" or "Opposer"), files this Notice of Opposition against Paul R. Kenney, III ("Applicant") because it believes that it would be damaged by the registration of the above-identified mark in International Class 025 and hereby opposes same, pursuant to 15 U.S.C. § 1063 and 37 C.F.R. § 2.104.

As grounds for opposition, it is alleged that:

1) Next Retail is the owner of U.S. Trademark Registration No. 2912202 for NEXT for clothing, namely, t-shirts, fleece shirts, denim shirts, jackets, pants and hats in International Class 025.

2) Next Retail is the owner of U.S. Trademark Registration No. 4553715 for NEXT DIRECTORY for clothing, namely, socks; stockings; tights; scarves; gloves; mittens; belts; outerwear, namely, coats, overcoats and raincoats; sports coats; suits; jackets; trousers; pants; jeans; shorts; shirts; T-shirts; polo-shirts; tops; pullovers; sweaters; jerseys; cardigans; jumpers; fleeces, namely, pullovers, jackets and vests; braces; underwear; vests; dinner jackets; ties; cravats; swimsuits; dressing gowns; pajamas; footwear and headwear in International Class 025

and for retail store services, online retail store services, mail order catalogue services, online catalog services and online trading services in the fields of clothing, headgear and footwear, jewelry, fashion accessories, household articles, towels, bedding, textiles, furniture, lighting apparatus, toys, electrical products, cosmetics, non-medicated toilet preparations, eyewear, carrying cases, handbags and all manner of bags, kitchenware, paints, wallpaper and other products for decorating the home, pictures, picture frames, electrical products cameras; providing consulting and advice in relation to the aforesaid retail services relating to the aforesaid goods; business management consultancy, namely, offering technical and business management assistance in the establishment and operation of retail stores in the field of the aforesaid goods in International Class 035.

3) Next Retail is the owner of the following U.S. Trademark Applications:

NEXT DIRECT                      Ser. No. 85463975

NEXT                                      Ser. No. 85463777

4) Next Retail's Registration No. 2912202 is *prima facie* proof of ownership of the NEXT mark, pursuant to 15 U.S.C. § 1057(b), and of the exclusive right to use the registered mark in commerce.

5) Registration No. 2912202 is incontestable, pursuant to Section 15 of the Trademark Act. *See* 15 USC § 1065.

6) The registration date of Registration No. 2912202 pre-dates the filing date of Applicant's Application.

7) Next Retail's Registration No. 4553715 is *prima facie* proof of ownership of the NEXT mark, pursuant to 15 U.S.C. § 1057(b), and of the exclusive right to use the registered mark in commerce.

8) The application date of Registration No. 4553715 pre-dates the filing date of Applicant's Application.

9) Next Retail is and has been engaged in the sale and marketing of International Class 025 goods, including, but not limited to, T-shirts and caps, under and using the trademark NEXT with International Class 025 goods and with retail services selling International Class 025 goods since a time prior to the filing of Applicant's application.

10) Next Retail has used the NEXT trademark in commerce and has valuable goodwill and recognition for its mark.

11) The filing dates of Next Retail's NEXT DIRECT and NEXT applications are prior to the filing date of Applicant's Application.

12) Applicant seeks to register NEXT MAN UP as a trademark for "Clothing and headgear, namely, T-shirts, caps, and wristbands associated with anti-bullying" in International Class 025.

13) On information and belief, Applicant's mark as used in connection with the noted goods is likely to be confused with or mistaken for or cause deception with Next Retail's NEXT trademark as used in connection with its goods and services and with Next Retail's NEXT DIRECTORY trademark as used in connection with its goods and services and with Next Retail's NEXT DIRECT trademark as used in connection with its services.

14) On information and belief, if Applicant's mark is registered, Applicant's mark is likely to cause confusion or to cause mistake or to deceive.

15) On information and belief, Applicant's registration of its mark would harm Next Retail.

NEXT RETAIL prays that this application Serial No. 86/007,497 be refused, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Next Retail Limited.



Respectfully submitted for  
Opposer, Next Retail, Ltd

By: Mitchell E. Radin

Mitchell E. Radin

Jeffrey A. Lindenbaum

Oren Gelber

COLLEN *IP*

The Holyoke-Manhattan Building

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DATED: March 16, 2015

Enclosure: \$300 Filing Fee (1 Class)

SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 03-2465.

I HEREBY CERTIFY THAT ON MARCH 16, 2015, THIS CORRESPONDENCE IS BEING FILED THROUGH THE ELECTRONIC SYSTEM FOR TRADEMARK TRIAL AND APPEALS IN THE UNITED STATES PATENT AND TRADEMARK OFFICE.

COLLEN *IP*, THE HOLYOKE-MANHATTAN BUILDING, 80 SOUTH HIGHLAND AVENUE, OSSINING, NEW YORK 10562

By: Mitchell E. Radin Date: March 16, 2015

**CERTIFICATE OF SERVICE**

I, Meaghan Machcinski, hereby certify that I caused a true and correct copy of the foregoing Notice of Opposition to be served upon:

PAUL R. KENNEY, III  
PO BOX 47112  
PHOENIX, ARIZONA 85068-7112

via first-class mail, postage pre-paid on this 16<sup>th</sup> Day of March, 2015.

A handwritten signature in black ink, appearing to read "Meaghan Machcinski", is written over a horizontal line.